

3 JUNE 1947

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of
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3 JUNE 1947

I N D E X

Of

EXHIBITS

(cont'd)

<u>Doc.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
1147	2688		Affidavit of UKAI, Yoshio		23485
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1 Tuesday, 3 June 1947

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3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

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12 Appearances:

13 For the Tribunal, same as before.

14 For the Prosecution Section, same as before.

15 For the Defense Section, same as before.

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17 (English to Japanese and Japanese
18 to English interpretation was made by the
19 Language Section, INTFE.)
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BLAKE

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in
3 session.

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5 H O M E R C. B L A K E, Lieutenant Colonel,
6 United States Army, called as a witness on
7 behalf of the defense, resumed the stand and
8 testified further as follows:

- - -

9
10 THE PRESIDENT: Major Blakeney.

11 Will you gentlemen pay the Court some little
12 courtesy? We are not going to wait on you.

13 A question was raised yesterday as to the
14 disclosure of certain documents. We would like that
15 matter argued fully.

16 MR. BLAKENEY: The prosecution being the
17 objecting party, I assumed that they would argue first.

18 THE PRESIDENT: They are raising the point,
19 yes. They claim the privilege and have the onus and
20 right to begin.

21 GENERAL VASILIEV: Your Honor, as far as I
22 understand in this Tribunal the following rule of
23 accepting evidence was established. If the document
24 is referred to it must be produced before the Tribunal.
25 If there is no document and it has been destroyed the

BLAKE

DIRECT

1 corresponding certificate must be submitted to account
2 for this document. And as far as I understand if the
3 document is secret, then without stating the sources
4 of the document the data contained in the document is
5 submitted to the Tribunal in the proper form.
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1 The case under question is not within these
2 three categories of documents of which I speak. The
3 documents exist; they are not destroyed because they
4 are before the witness here. Therefore, they should
5 be produced as far as I understand. If the sources and
6 the documents themselves are secret, it doesn't pre-
7 clude the possibility of producing the data contained
8 therein in the proper form without prejudicing the
9 secrecy of the document.

10 As far as I understand the defense wishes the
11 Tribunal to deal not with the testimony of the witness
12 himself, but with the data received from G-2 and that
13 is quite another matter. If that is the case, if G-2
14 considers it necessary to give this data then let them
15 produce the document in the proper form.

16 What is going on here, I think it is
17 inadmissible, because the witness looks into some
18 books, reads from them and we don't know the nature
19 of the documents or books which are before him. If it
20 is official data let them give this data, let them
21 produce this data in an official form; that is the
22 substance of our objection.

23 THE PRESIDENT: Major Blakeney.

24 MR. BLAKENEY: Counsel's statement of the
25 rule of the Tribunal relative to the production of

BLAKE

DIRECT

1 documents is inaccurate. This perhaps comes about
2 because the rule is a rule of hearsay which is a
3 peculiarity of Anglo-Saxon law.

4 THE PRESIDENT: Would you say Anglo-American
5 now?

6 MR. BLAKENEY: Of the common law of England.

7 THE PRESIDENT: And of America -- United
8 States.

9 MR. BLAKENEY: The rule as formulated and
10 applied in this Tribunal is as follows: that documents
11 referred to in evidence must be produced or their non-
12 production accounted for. Non-production can be account-
13 ed for by proof of destruction. It can also be
14 accounted for by proof of requirements of military or
15 state secrecy.

16 Counsel demands that even though the documents
17 be not produced proof of their contents be made in
18 some proper way. Clearly, if this same witness
19 extracted and wrote out in his office excerpts from
20 these documents and certified them as being correct
21 they would be admissible in accordance with the
22 practice of this Tribunal hitherto. The evidence now
23 being given is of precisely the same character and it,
24 as it is submitted, stands on the same ground.

25 And in this same connection I should point out

BLAKE

DIRECT

1 that there is precedence for this type of evidence in
2 this trial. For example, prosecution exhibit No. 706
3 is a document prepared and not even certified to, but
4 signed by a deputy chief of department of the General
5 Staff of the Red Army.

6 THE PRESIDENT: As a colleague reminds me,
7 General Vasiliev may be prepared to accept such a
8 certificate in this matter and end discussion.

9 MR. BLAKENEY: Of course the oath of the wit-
10 ness is his certificate.

11 THE PRESIDENT: Not in his estimation and we
12 will have to decide this according to strict legal
13 principles perhaps.

14 General Vasiliev.

15 GENERAL VASILIEV: As far as I understand the
16 question now raised is the question of the admissibility
17 of the documents, not about our attitude to the sub-
18 stance of the document.

19 THE PRESIDENT: No, we can avoid a full dress
20 debate on that decision, on that point, according to
21 your attitude.

22 The Russian certified to certain particulars
23 which must have been taken from documents and that
24 passed here. Are you prepared to concede to the
25 defense the privilege you claim for yourself?

BLAKE

DIRECT

1 As a colleague reminds me, there may be a
2 serious objection to that kind of thing anyhow. The
3 part not disclosed may modify the part disclosed. As
4 to that we have to trust the judgment of the person
5 dissecting the document and to say the least that is
6 unsatisfactory.

7 I would like to ask the witness at this stage,
8 I think it is appropriate, who has authorized partial
9 disclosure of the contents of these secret documents
10 and forbidden full disclosure of their contents?

11 THE WITNESS: The Assistant Chief of Staff,
12 G-2, General Headquarters, Far East Command.

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1 GENERAL VASILIEV: May I ask the witness to
2 tell the name of the person who authorized non-pro-
3 duction of the documents, because, as far as I know,
4 there are several assistant chiefs of staff? Maybe
5 I am mistaken.

6 THE PRESIDENT: That description is suf-
7 ficient for our purposes and, I think, for yours too,
8 General.

9 Was there a debate about the admission of
10 that Russian document, Mr. Blakeney, do you recollect,
11 exhibit 706?

12 MR. BLAKENEY: Without being able to state
13 offhand in connection with that particular document,
14 I can state this --

15 THE PRESIDENT: If we overruled the defense
16 objection, if there was one, then if you offer a
17 certificate here and if there is objection by the
18 prosecution, we must overrule their objection. We
19 must be consistent.

20 MR. BLAKENEY: I was about to state that
21 the defense did repeatedly object to this type of
22 evidence and finally requested that our objection
23 be considered in the interest of time-saving to go
24 to each tender of such a document.

25 THE PRESIDENT: A general blanket objection

BLAKE

DIRECT

1 would be sufficient.

2 GENERAL VASILIEV: May I give some expla-
3 nations? I didn't answer your words, your Honor,
4 addressed to me.

5 THE PRESIDENT: I understand now that the
6 witness described himself as an assistant chief of
7 staff but in different terms from those used this
8 morning about the person authorizing the disclosure
9 of this document or partial disclosure.

10 GENERAL VASILIEV: When we produced our
11 document, the document was made according to the
12 established forms, it was certified by the signatures
13 and seals of the General Staff. We were additionally
14 asked about the source of the document, and we addi-
15 tionally gave certifice to that effect -- produced
16 certificate to that effect. On the basis of equal-
17 ity, we want now to have documents of the same kind,
18 nothing more; that is, as far as the admissibility
19 of the document is concerned, not the correctness of
20 the substance of the document itself.

21
22 THE PRESIDENT: Well, his oath is better
23 than his certificate, General.

24 GENERAL VASILIEV: Maybe. But, I can't
25 understand why G-2 produces evidence through witness
but not in the form of document. If evidence can be

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BLAKE

DIRECT

1 given through witness, I can't understand why it
2 can't be given in the form of a document.

3 MR. BLAKENEY: I might point out that the
4 defense is offering a good deal more than the pros-
5 ecution did. Prosecution exhibit 709, being the
6 certificate referred to by General Vasiliev, plain-
7 ly shows that exhibit 706 and many other similar
8 documents were prepared on the basis of reports and
9 other papers not produced, documents not produced
10 and not stated to be military secret, whereas we
11 have done the most permitted to us by the Supreme
12 Commander by bringing the document here and having
13 the witness disclose to us such part as the Supreme
14 Commander authorizes the disclosure of.

15 THE PRESIDENT: I do not know what further
16 point you are going to raise, General. I do not
17 know whether you are taking the point that the evi-
18 dence is irrelevant, or immaterial anyhow. If you
19 are going to take that point, we had better decide
20 that straightaway.
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BLAKE

DIRECT

1 GENERAL VASILIEV: The questions of materiality
2 and relevance of the documents are another matter. I
3 think that even from this point of view, the data is
4 not very valuable for the Tribunal in connection with
5 the issues of the case; first, because these data give
6 us impression only of a part of the Japanese forces.
7 At any moment hundreds of aircraft could be transferred
8 from other part of the Japanese Army in the shortest
9 possible time. The transfer of the ground forces
10 could be effectuated as soon -- very speedily.

11 Second, these data relate to the later years,
12 1943, '44, and '45, when the danger of Japan attacking
13 Soviet Union was not so vital -- was not so acute.
14 Therefore, these data do not cover the most important
15 period for us, the period of 1941-42.

16 And, third, Soviet Army -- its General Staff --
17 produced to this Tribunal data concerning the strength
18 of the Kwantung Army and concerning armed forces of
19 Japan in toto, and these data covered the most impor-
20 tant period of 1941-42. Besides, the Soviet Army was
21 in a more favorable position than the American Army
22 because Soviet Army operated in Manchuria, itself, and
23 received part of the military archives there, military
24 archives of the Kwantung Army.

25 I have no right to question the data produced

BLAKE

DIRECT

1 by this gentleman, here, and I believe that these data
2 are correct; but it seems to me that the Soviet Union,
3 being a neighboring country to Manchuria, knew better
4 about the armed forces in that country.

5 On these grounds, as far as the relevancy of
6 the documents is concerned, I think that the Tribunal
7 shouldn't receive them in evidence, leaving aside the
8 question of their juridical admissibility of which we
9 have spoken before.

10 THE PRESIDENT: Major Blakeney, would you
11 like to say something?

12 MR. BLAKENEY: Yes, sir.

13 The prosecution made the strength and the
14 growth of the Kwantung and Korea armies, especially
15 during the years 1941-1945, an issue in the case.
16 Much evidence was offered on the point, but the only
17 part of it tending to support the Soviet contention
18 that huge military concentrations were made in Man-
19 churia and Korea by the Japanese is prosecution
20 exhibit 706, a table prepared by a deputy chief of
21 department of the General Staff of the Red Army for
22 use in this trial. This table is dated 30 January
23 1946, and is a flagrant example of the type of self-
24 serving declaration put into evidence by the Soviet
25 prosecution, consisting as it does of nothing more than

BLAKE

DIRECT

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2 are correct; but it seems to me that the Soviet Union,
3 being a neighboring country to Manchuria, knew better
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22 use in this trial. This table is dated 30 January
23 1946, and is a flagrant example of the type of self-
24 serving declaration put into evidence by the Soviet
25 prosecution, consisting as it does of nothing more than

BLAKE

DIRECT

1 a conclusion, not even stated upon oath, offered with-
2 out the safeguard of cross-examination to test its
3 factual basis, if any.

4 As against this, I offer proof of estimates
5 by the United States Army, estimates made during war-
6 time, not with the object of conviction in a war
7 crimes trial, but estimates intended and utilized as
8 the basis of planning the extremely grave matter of
9 prosecution of the war. There can be no comparison
10 between the two in probative value. And while it is
11 true that these are merely estimates, Colonel Blake
12 will show later that confirmation of their accuracy
13 has been had from more than one source.

14 While it is true, as General Vasiliev points
15 out, that figures are offered for only the years
16 1943 to 1945, there are two observations to be made
17 in connection with that. First is that the Soviet
18 figures in exhibit 706 come down to and include the
19 year 1945, starting in 1932. The second observation
20 is that, as Colonel Blake has already testified, only
21 the estimates for 1943 to 1945 are at present avail-
22 able here. I had already asked him, however, to
23 attempt to secure the records for 1941 and 1942, and I
24 had proposed requesting leave of the Tribunal to recall
25 him for presentation of that evidence when it becomes

BLAKE

DIRECT

23,420

available.

1 Finally, since General Vasiliev has stated
2 that he believes the figures given by the witness to
3 be correct despite the differences with the figures
4 in exhibit 706, I don't quite understand his objection
5 to the introduction of the testimony. His entire
6 argument was, of course, in fact a commentary on the
7 weight to be attached to this evidence.

8 It is therefore submitted that on the ques-
9 tions both of admissibility -- both of form and of
10 content, the evidence should be received by the
11 Tribunal.

12 GENERAL VASILIEV: Apparently I have been mis-
13 understood. I haven't said the data were correct;
14 on the contrary, I think they are not quite correct.
15 I said that I didn't question the credibility of the
16 witness' testimony given on the basis of the material
17 he has. But maybe the materials at his disposal are
18 not quite complete and quite accurate. That might
19 happen in this case.

20 THE PRESIDENT: Having heard you both fully,
21 we will retire for a few minutes to consider our decision

22 (Whereupon, at 1030, a recess was
23 taken until 1055, after which the proceed-
24 ings were resumed as follows:)
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BLAKE

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Yesterday afternoon, be-
4 tween three and four o'clock, the accused TOJO was
5 absent from the dock, conferring with his counsel
6 with the permission of the Tribunal. He will be
7 absent again today between eleven and twelve o'clock
8 for the same purpose and with permission of the
9 Tribunal.

10 The Court has come to its conclusion on the
11 prosecution's objections to the evidence of the wit-
12 ness now on the stand. We have decided to overrule
13 all objections and to admit the evidence. The ob-
14 jections are overruled accordingly.

15 DIRECT EXAMINATION

16 BY MR. BLAKENEY (Continued):

17 Q Mr. Witness, had you concluded your testi-
18 mony on the matter about which you were questioned?

19 A. I had only one statement on the last date
20 given. On the number of aircraft for Manchuria and
21 Korea, there are no estimates available.

22 Q Now I pass to a different subject.

23 Is the Assistant Chief of Staff, G-2, also
24 the official repository of those records and docu-
25 ments of the Japanese Army General Staff and Ministry

BLAKE

DIRECT

1 of War which were turned over to the Supreme Com-
2 mander for the Allied Powers after the surrender
3 of Japan?

4 A. It is.

5 Q I hand you a document, defense document
6 1623, entitled "Chart of the Distribution of Soviet
7 Forces in the Soviet East Since 1931" and ask you
8 whether you can identify it as a translation of an
9 official document of the Japanese General Staff so
10 procured by G-2 and now in its custody.

11 A I recognize this as a translation of a docu-
12 ment from the files of the Japanese General Staff
13 turned over to ATIS, an agency of G-2, and now in its
14 custody.
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1 THE PRESIDENT: General Vasiliev.

2 GENERAL VASILIEV: This document has been
3 served upon the prosecution only today in violation
4 of the established rule. We ask the Tribunal to
5 point out that the rule must be complied with
6 and the document should be served in 24 hours --
7 24 hours in advance.

8 MR. BLAKENEY: The document is being offered
9 as part of the testimony of the witness. That is,
10 it will be, when it is offered. It has not yet been
11 offered. I was preparing to ask that it be marked
12 for identification at which time the objection
13 might be considered perhaps.

14 THE PRESIDENT: Objection or no objection
15 it will be marked for identification. It always is.

16 CLERK OF THE COURT: Defense document
17 1623 will receive exhibit No. 2681 for identification
18 only.

19 (Whereupon, the document above
20 referred to was marked defense exhibit
21 No. 2681 for identification.)

22 BY MR. BLAKENEY (Continued):

23 Q I hand you another document, defense document
24 1318, entitled "Military Power in Manchoukuo and
25 Korea" and ask you whether you can identify it as

BLAKE

DIRECT

another such document?

(Whereupon, a document was handed
to the witness.)

A I can identify it.

MR. BLAKENEY: Defense document 1318 is
tendered for identification.

There seems to be a question whether the
witness said "I can" or "cannot" identify the
document. May the court reporter read the answer?

(Whereupon, the last answer was
read by the official court reporter.)

MR. BLAKENEY: It is tendered for identification.

CLERK OF THE COURT: Defense document 1318
will receive exhibit No. 2682 for identification only.

(Whereupon, the document above
referred to was marked defense exhibit
No. 2682 for identification.)

Q Mr. Witness, have you in the records of
the Order of Battle Section such information as has
been officially supplied by the USSR concerning
Japanese strength in Manchuria and Korea?

A I have.

Q Kindly consult your records and give the
Tribunal the latest figures supplied by the USSR
of the number of Japanese troops captured or killed

1 by them in their attack on Manchuria.

2 A The Soviets announced captured and killed
3 more than 674,000 officers and men.

4 MR. BLAKENEY: You may cross-examine.

5 THE PRESIDENT: General Vasiliev.

6 GENERAL VASILIEV: The prosecution do not
7 desire to cross-examine, your Honor.

8 MR. BLAKENEY: I ask that the witness be
9 excused with the reservation that he may be recalled
10 later, when figures of Japanese strength for the
11 years 1941 and '42 shall have become available.

12 THE PRESIDENT: He is excused accordingly.

13 (Whereupon, the witness was excused.)

14 MR. BLAKENEY: I now call as a witness
15 KOZUKI, Yoshio, whose testimony is contained in an
16 affidavit, defense document 1153.

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KOZUKI

DIRECT

23,456

1 Y O S H I O K O Z U K I, called as a witness
2 on behalf of the defense, being first duly
3 sworn, testified through Japanese inter-
4 preters as follows:

DIRECT EXAMINATION

5 BY MR. BLAKENNEY:

6 Q I ask you, Mr. Witness, to state your
7 name and residence?

8 A My name is KOZUKI, Yoshio. My address,
9 68 Wakabayashi-Machi, Setagaya Ward, Tokyo.

10 MR. BLAKENEY: I ask that the witness be
11 handed defense document 1153.

12 (Whereupon, a document was handed
13 to the witness.)

14 Q I ask you, Mr. Witness, to state whether
15 that is your affidavit, bearing your signature and
16 seal?

17 A Yes, this is my affidavit and my seal is
18 affixed thereto.

19 MR. BLAKENEY: I should like to state to
20 the Tribunal that by comparison with the Japanese
21 original it appears that in the English copy of the
22 affidavit there is a typographical error. In
23 paragraph 5, the first line, the month "January"
24 should be "November."
25

KOZUKI

DIRECT

23,457

1 Q With that correction, Mr. Witness, are
2 the contents of your affidavit true and correct?

3 A With the exception of the correction which
4 you mentioned, namely, that in the Japanese version
5 the month "November" is "January" the remaining
6 portions of the affidavit are correct.

7 MR. BLAKENEY: The affidavit, defense
8 document 1153, is offered in evidence.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Defense document
11 1153 will receive exhibit No. 2683.

12 (Whereupon, the document above
13 referred to was marked defense exhibit
14 No. 2683 and received in evidence.)
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KOZUKI

DIRECT

1 MR. BLAKENEY: I shall read the affidavit
2 which, omitting formal parts, is as follows:

3 "I, KOZUKI Yoshio, served in Chientao,
4 Manchoukuo, under General UMEZU, Commander in Chief
5 of the Kwantung Army, as Commander of the Second Army
6 from July 1942 to May 1943. During my service there
7 I made every effort to avoid any trouble with the
8 USSR and to maintain a state of tranquillity vis-a-vis
9 that country.

10 "(1) Upon my arrival in Hsinking, Commander
11 UMEZU gave me instructions that from the standpoint of
12 Japan's general circumstances I was to take all possible
13 and complete measures to avoid absolutely any trouble
14 with the USSR and thereby to avoid irritating them.

15 "(2) Lieutenant-General YOSHIMOTO, Chief
16 of Staff of the Kwantung Army, told me the same thing
17 on the same occasion. He particularly emphasized that
18 I must strictly abide by the Border Guard Regulations
19 and that in going in or out of the restricted zone
20 of operation, even if it be a patrol, the permission
21 of the Commander in Chief must be obtained.

22 "(3) After that, at Commanders' Conferences
23 or when he came to Chientao on a field inspection,
24 Commander UMEZU repeatedly reminded us to avoid any-
25 thing that might irritate the USSR.

KOZUKI

DIRECT

1 "(4) In accordance with the policy of my
2 senior officers, I instructed my subordinates and
3 guided them so as not to irritate the USSR.

4 "(5) In November 1942, there was a field
5 fire which started in and spread in our direction
6 from the Soviet Maritime Province and finally burned
7 a part of our fortifications, as we were prohibited
8 from going into the restricted zone of operation to
9 extinguish the fire. To such an extent my subordinates
10 strictly obeyed the Border Guard Regulations and
11 avoided irritating the USSR.

12 "(6) Some time in January 1943, I climbed
13 a little mountain between Hunchun and Chunchwa, for
14 the purpose of inspecting our fortifications there.
15 Though the mountain was within our fortifications,
16 Soviet soldiers came out of their fortifications and
17 approached us. Realizing that I might have provoked
18 them, and feeling that it was unfortunate if that were
19 the case, I immediately stopped my inspection and came
20 down from the mountain.

21 "(7) As General UMEZU is my senior and I
22 having at times served under his direct command as his
23 subordinate, I knew his character very well. He is a
24 serious-minded and impartial man. In performing his
25 duties he always had his eyes on the general overall

KOZUKI

DIRECT
CROSS

1 situation. Always warning against thoughtless
2 action, he, by his very nature exercised care and cir-
3 cumpection in handling matters. I have always be-
4 lieved that he was the right man as a front line
5 commander in chief to carry out Japan's national
6 policy which was to maintain peace with the USSR."

7 You may cross-examine.

8 THE PRESIDENT: Colonel Ivanov.

9 CROSS-EXAMINATION

10 BY COLONEL IVANOV:

11 Q Mr. Witness, you as former commander of
12 the Second Army testify that you had instructions to
13 prevent border clashes with the USSR, don't you.

14 A I am sorry, I was unable to hear your
15 present question very well. I understood you to ask
16 if my affidavit was true and correct. If that was the
17 question my answer is yes.

18 Q I ask the court reporter, the Japanese
19 court reporter, to repeat my question.

20 (Whereupon, the question was read
21 by the Japanese court reporter.)

22 A I understand now. I shall reply. As you say.

23 Q Did you know the real intentions and plans
24 of the Japanese Government and high command to the
25 USSR?

KOZUKI

CROSS

1 A I shall reply. I have never heard directly
2 from the Commander in Chief what was the policy of
3 the Japanese Government; however--

4 Q Mr. Witness, did you know the resolution
5 adopted at the Imperial Conference on July 2, 1941 to
6 use arms against the Soviet Union in case the develop-
7 ment of the German-Soviet war would be favorable for
8 Japan?

9 A I know nothing about it whatsoever.

10 COLONEL IVANOV: Your Honor, asking this
11 question I had in mind exhibit 779.

12 Q Then, Mr. Witness, you didn't know the real
13 intentions and plans of the Japanese Government and
14 high command as regards the Soviet Union in 1941-1943,
15 did you?

16 A Since these policies were matters of the
17 utmost secrecy they were not even divulged -- they
18 were never divulged to us, the subordinate commanders
19 of the Kwantung Army by the Commander in Chief.

20 Q Weren't you as the commander of the Second
21 Army directly under the commander of the First Area
22 Army which comprised your army?

23 A Yes, as you say.

24 Q Then your contention in paragraph 7 of your
25 affidavit that you were directly under the commander

KOZUKI

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1 of the Kwantung Army, General UMEZU, is wrong, isn't
2 it?

3 A The First Area Army was directly under the
4 jurisdiction of the Kwantung Army, commander of the
5 Kwantung Army, and under the First Area Army was the
6 Second Army.

7 Q Mr. Witness, you also didn't know the full
8 contents of the plan of a war against the USSR for
9 1942 drafted by the headquarters of the Kwantung Army and
10 sanctioned by General UMEZU, didn't you?

11 A I know nothing about them. I wasn't told
12 anything about them.

13 Q Being commander of the Second Army you
14 didn't know that the General Staff of Japan sent in-
15 structions to the Kwantung Army headquarters on drafting
16 the plan of a war against the USSR in 1942, did you?

17 A I know nothing about it at all.

18 Q But you knew about such measures of the plan
19 which provided for the military operations of the First
20 Area Army and your Second Army comprised in this Area
21 Army, did you?

22 A We were not informed of any plan of operations.

23 Q Did the plan of a war for 1942 provide for
24 the seizure of the Soviet Maritime Province by the
25 forces of the First Area Army in which your army was

KOZUKI

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1 comprised?

2 A Nothing of that sort was ever told me.

3 Q Was the First Area Army formed in the
4 Kwantung Army in July 1942?

5 A I think so.

6 Q Then the plan was not a mere theoretical
7 plan but it was a real plan. For the realization of
8 this plan the special organization, the proper organ-
9 ization of the military forces, was created --
10 preliminarily created -- wasn't it?

11 A I was not informed directly of the purpose
12 for which the First Area Army was formed; however, I
13 believed that it was in order to establish -- to
14 renovate the line of command.

15 Q Do you know that First Area Army in 1942
16 comprised four armies and the operations of these
17 armies directed at the seizure of the Soviet Maritime
18 Province were provided for by a plan of war -- by the
19 plan of war?

20 A I do not believe that our forces were
21 increased in order to occupy Soviet territory.

22 Q Was not the task of the Second Army
23 under your command, according to the plan of war for
24 1942 to seize the southern Ussuri District of the
25 Soviet Maritime Province?

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A Such battle plans were never shown me.

Q I will read you an excerpt from exhibit 836, bearing upon a plan of war against the U.S.S.R., drafted by the Kwantung Army for 1942. I quote:

"In the item concerning the tasks of the different fronts and armies, the task of the First Front was indicated as follows: that the Second Army should attack from CHIENTAO Area toward the Southern USSURI Area; that the Third Army should attack from TUNGNING Area toward VOROSHILOV; that the Twentieth Army should attack from the area to the west of Lake Khanka toward VOROSHILOV; and that the Fifth Army should attack from HUTOW Area toward IMAN Area and thereby cut off the enemy's communications extending from south to north and later have one part of the force cover the north and have another part advance southward to facilitate the attack of the main force on VOROSHILOV."

Q Mr. Witness, did the Second Army have such offensive but not defensive task, according to the plan of war?

A I have heard of these battle plans for the first time here -- of these battle plans of the

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1 Kwantung Army for the first time here in this
2 court-room. Such battle plans were never shown
3 at the time even to the headquarters of the various
4 armies.

5 Q Then, being the commander of the Second
6 Army you insist that you did not know the fighting
7 tasks of this army in case of a war against the
8 Soviet Union?

9 A Yes, as you say.

10 Q Was that a special feature of the Second
11 Army under your command, or didn't the commanding
12 generals of other armies also know their fighting
13 tasks in case of a war?

14 A I suppose that the commanders of the
15 other armies likewise didn't know about those battle
16 plans.

17 Q Did you consider it actually possible that
18 the U.S.S.R. could on her own initiative start, in
19 1941-1942, a war against Japan under the circum-
20 stances of the hard war waged by the Soviet Union
21 against Germany and her allies on the Western Front?
22

23 A Although I am unable to understand clear-
24 ly your last question, I would like to have it
25 repeated again.

COLONEL IVANOV: May the Japanese court

KOZUKI

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1 reporter repeat this question?

2 (The last question was repeated.)

3 A I take your question to mean, Do you
4 suppose that the Soviet Union intended to start a
5 war against Japan?

6 Q I add "under these hard circumstances in
7 which the Soviet Union was in 1941-1942."

8 A I cannot testify with regard to anything
9 before 1942, as I was not commander of the Second
10 Army before that period; but for the years 1942 --
11 but during the years 1942 and 1943 I did think
12 that it was possible that border incidents might
13 break out. However, I did not believe it possible
14 that large-scale fighting would develop.

15 Q Then, can your statement to the effect that
16 in January 1942 the Soviet troops fired on the
17 Japanese fortifications, which were burned down
18 because Japanese soldiers allegedly had no right to
19 put out the fire, have any force in the light of
20 your previous statement?

21 THE PRESIDENT: Major Blakeney.

22 MR. BLAKENEY: I understood counsel's ques-
23 tion to include a statement that Russian soldiers
24 fired at Japanese fortifications. No such state-
25 ment occurs in the affidavit.

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COLONEL IVANOV: Your Honor, in paragraph
5 of the affidavit it is stated that in January
1942 the Soviet troops opened fire at the Japanese
fortifications on the territory of Manchukuo, where
the Japanese troops were deployed.

THE PRESIDENT: I think field fire there
means a grass fire, or a forest fire. But a forest
isn't ordinarily identified as a field.

COLONEL IVANOV: That concludes my cross-
examination, your Honor.

THE PRESIDENT: Major Blakeney.

REDIRECT EXAMINATION

BY MR. BLAKENEY:

Q Were you aware of the fact that the Imperial Conference of the 6th of September 1941 adopted a resolution including the following?

"As to Japan's attitude toward Soviet Russia, Japan will not take the initiative for military action as long as the Soviet Union will respect the Russo-Japanese neutrality pact, and will not threaten both Japan and Manchukuo."

This I read from prosecution exhibit 779, already put to you.

Were you aware of that?

A I knew nothing directly about decisions

KOZUKI

REDIRECT

arrived at in the Imperial General Headquarters.

1 Q This wasn't a decision of the Imperial
2 General Headquarters, but I do take this answer
3 to mean that you did not know of it?

4 A Yes, that is so.

5 Q May I ask whether during your time as
6 commander of the Second Army you were at any time
7 in any way informed or made aware of plans for
8 waging war against the U.S.S.R.?

9 A No, never.

10 MR. BLAKENEY: That is all.

11 May the witness be excused on the usual
12 terms?

13 THE PRESIDENT: He is excused accordingly.

14 (Thereupon, the witness was excused.)

15 MR. BLAKENEY: I now revert for a moment to
16 exhibit 2,673, the testimony of Major General
17 MATSUMURA. As additional proof of the policy of
18 the Kwantung Army to avoid disputes with the U.S.S.R.
19 or disturbance of peaceful relations, I read commenc-
20 ing with the beginning of the affidavit:

21 "Q State your duties and the period of your
22 service in the Kwantung Army.

23 "A I assumed my post at the Kwantung Army
24 in August 1943, as chief of the 1st Section. Later
25

1 I became vice-chief of staff and was continually
2 in charge of matters related to operations.

3 "Q State the period of time you served under
4 the Commanders-in-Chief UMEZU and YANADA.

5 "A I was under the command of General UMEZU
6 from August 1943 to July 1944, and after that I was
7 under General YANADA.

8 "Q What were your relations with General
9 UMEZU during the time you served under him?

10 "A I saw him often and talked with him on all
11 operational and other matters.

12 "Q Did you often hear his opinion on the
13 subject of the attitude of the Kwantung Army towards
14 the Soviet Union?

15 "A Yes, I did.

16 "Q Did you hear him state his opinion in both
17 official and private capacities?

18 "A Yes, I did.

19 "Q What were his views?

20 "A He often said that his chief policy was
21 to keep peace with the Soviets and to prevent in
22 advance the occurrence of disputes which might
23 irritate the Soviets or hamper the peaceful rela-
24 tions. However, he made operational preparations
25 for defense, such as the construction of fortifica-

1 tions.

2 "Q What measures did General UMEZU adopt to
3 carry out this policy?

4 "A He gave instructions many times at Army
5 Commanders Conferences which I attended, so that
6 this policy be thoroughly carried out.

7 "Q Are you familiar with the 'Border Guard
8 Regulations'?

9 "A Yes.

10 "Q For what purpose were they created?

11 "A They were made in order to prevent the
12 occurrence of border disputes.

13 "Q When were they put into effect?

14 "A They had already existed when I assumed
15 my post. Later I came to know from documents that
16 they had been enacted after the Nomonhan Incident.

17 "Q State the contents of the 'Border Guard
18 Regulations.'

19 "A Though they varied according to the topo-
20 graphies of the border regions, 'non-fortified
21 zones' in which fortification and troop movements
22 were to be strictly prohibited, were to be set up
23 within Manchuria.

24 "Q Were they made by a Russo-Japanese agree-
25 ment?

23,471

"A They were made by the Kwantung Army alone."

IIMURA

DIRECT

1 MR. BLAKENEY: With that I leave the
2 affidavit of General MATSUMURA for the time being.

3 I now wish to recall as a witness IIMURA,
4 Minoru, who will testify by his affidavit, defense
5 document 1445. I may remind the Tribunal that the
6 witness has already been sworn and testified in
7 this cause.

8 THE PRESIDENT: You are still under your
9 former oath.

10 MR. BLAKENEY: In this connection I refer
11 to exhibit 2679.

12 - - -

13 M I N O R U I I M U R A, recalled as a witness
14 on behalf of the defense, having been
15 previously sworn, testified through Japanese
16 interpreters as follows:

17 DIRECT EXAMINATION

18 BY MR. BLAKENEY:

19 Q State your name, Mr. Witness.

20 A IIMURA, Jo.

21 MR. BLAKENEY: I ask that he be handed
22 defense document 1445.

23 Q And I ask you, Mr. Witness, to examine
24 that and state whether it is your affidavit, signed
25 and sealed by you.

IIMURA

DIRECT

1 MR. BLAKENEY: I call attention to the
2 fact that on page 2, line 4, the date of the wit-
3 ness' previous affidavit is inaccurately given.

4 Q With that exception, Mr. Witness, are the
5 contents of your affidavit true and correct?

6 A Yes, they are true and correct.

7 MR. BLAKENEY: I offer in evidence the
8 affidavit, defense document 1445.

9 THE PRESIDENT: Admitted on the usual
10 terms.

11 CLERK OF THE COURT: Defense document 1445
12 will receive exhibit No. 2684.

13 (Whereupon, the document above
14 referred to was marked defense exhibit
15 No. 2684 and received in evidence.)

16 MR. BLAKENEY: I shall read the affidavit,
17 which, omitting the formal parts, is as follows:

18 "1. I hereby undertake to give an account
19 of the fortification reported to have been built
20 in Manchuria.

21 "As is stated at the end of the deposition
22 which I made on August 17, 1946" -- it should be
23 corrected to 15 January 1947 -- "it was immediately
24 after the Nomonhan Incident that I was appointed
25 Chief of Staff of the Kwantung Army. Since we had

IIMURA

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1 suffered a great damage and loss of men during that
2 incident, we felt considerably insecure in regard to
3 the defense of Manchuria. The measure that Commander
4 in Chief UMEZU adopted to meet the situation was to
5 avert further border disputes, to construct defense
6 installations, especially new fortifications and to
7 strengthen the old ones. Accordingly, both the
8 construction and strengthening of fortifications
9 were entirely of defensive nature, and by no means
10 of offensive nature. The depth of the positions of
11 our fortifications cannot perhaps be said short" --
12 I think it should be -- "but compared with that of
13 Russian works, it would probably seem less great.
14 This, however, was due to the tactical idea of the
15 Japanese Army. Once their defense positions were
16 set up, it was the principle of the Japanese army
17 to defend them to the death, yielding not an inch
18 of ground to the enemy.

19 "2. About the construction of air bases and
20 airfields.

21 "During the period September, 1939 --
22 October, 1940, while I was Chief of Staff of the
23 Kwantung Army, there were not many air bases and
24 airfields constructed, though plans to increase
25 them were already in existence. In those days the

IIMURA

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1 Japanese air forces in Manchuria were extremely
2 meager, and so, in order to mitigate the loss and
3 damage that we were likely to suffer at the hands
4 of our enemy it was felt necessary that air bases
5 should be scattered far and wide to avoid receiv-
6 ing damages by one attack and that enemy raids
7 should be rendered futile by freely moving our
8 airplanes. Thus, it was only as a negative means
9 to preserve our fighting strength that numbers of
10 air bases and airfields were constructed.

11 "3. About the river crafts on the Sungari,
12 Manchuria.

13 "The Soviet river crafts, including large-
14 sized gun boats, were far superior to ours in num-
15 ber, so that it was absolutely impossible for Japan
16 or Manchuria to challenge the Soviet forces to a
17 fight on the river; we were to content ourselves
18 with constructing fortifications in the north of
19 Chiamussu to defend in case the Soviet forces should
20 come up the river on their offensive expedition.
21 Such being the circumstances, it was quite out of
22 the question for us to attempt on our own initia-
23 tive to operate against the Soviets on the Amur
24 River when we were provided with a meager number
25 of river boats."

1 MR. BLAKENEY: You may cross-examine.

2 THE PRESIDENT: We will adjourn until
3 half-past one.

4 (Whereupon, at 1200, a recess
5 was taken.)
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AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

MINORU IIMURA, recalled as a witness on
behalf of the defense, resumed the stand.

THE PRESIDENT: General Vasiliev.

GENERAL VASILIEV: The prosecution do not
desire to cross-examine and refer the Honorable Members
of the Tribunal to exhibits 713 and 714.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: I ask that the witness be
released on the usual terms.

THE PRESIDENT: He is released accordingly.

(Whereupon, the witness was excused.)

MR. BLAKENEY: Evidence was introduced by
the prosecution purporting to show frontier violations
by Japanese against the U.S.S.R. In this connection
I tender for identification defense document 1679, the
Report of Activities for 1940, compiled by the First
Section, Bureau of European-Asiatic Affairs of the
Foreign Ministry of Japan, and offer in evidence an

1 excerpt therefrom, having the same document number,
2 tabulating Soviet violations of these same frontiers
3 during the year 1940.
4

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Defense document No. 1679
7 being a book entitled "Report of Activities for 1940,"
8 in Japanese, will receive exhibit No. 2685 for identi-
9 fication only; the excerpt therefrom will receive
10 exhibit No. 2685-A.

11 (Whereupon, defense document No.
12 1679 was marked defense exhibit No. 2685
13 for identification, the excerpt therefrom
14 being marked defense exhibit No. 2685-A
15 and received in evidence.)

16 MR. BLAKENEY: I read from the document only
17 the introductory matter, the types of violations, and
18 the sum totals thereof:

19 "The total of the unlawful acts committed by
20 the Soviet Union on the Soviet-Manchurian frontier dur-
21 ing the period from January to the end of December,
22 this year, are given in the following list, classified
23 by their respective kinds and the districts where they
24 were committed.

25 "Unlawful firing, violation of border, kid-
napping, detention, sum total 94; violation of the

1 territorial air, sum total" it should be 12 but it is
2 marked blank in this copy; "Interruption in river
3 navigation, unlawful surveying, sum total" should be 8;
4 "Detention of rafts, 28; Others, 4. Total, 151."

5 Next I tender for identification defense
6 document 1680, the Report of Activities for 1941 of
7 the same section, and offer in evidence the excerpt
8 therefrom, bearing the same document number, listing
9 Soviet violations for the years 1938 through 1941.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Defense document 1680
12 being a book entitled "Report of Activities for 1941",
13 in Japanese, will receive exhibit No. 2686; the ex-
14 cerpt therefrom will receive exhibit No. 2686-A.

15 (Whereupon, defense document No.
16 1680 was marked defense exhibit No. 2686
17 for identification, the excerpt therefrom
18 being marked defense exhibit No. 2686-A
19 and received in evidence.)

20 MR. BLAKENEY: From this document I shall
21 read the first paragraph and the totals of violations
22 for the four years, omitting the rest:

23 "Generally speaking, the frontiers between
24 Manchoukuo and the Soviet Union (including those
25 between Manchoukuo and Mongolia) were calm in 1941.

1 There were no such collisions between big forces as had
2 occurred in the previous years. And it is a phenomenon
3 worthy of notice that the sum total of the unlawful
4 acts committed by the Soviet Union has shown the tendency
5 to decrease gradually from 1939 onward. If we inquire
6 into the nature of these unlawful acts, however, we
7 have to notice the rapid increase of such intentional
8 acts as the violation of the territorial air and the
9 plotted transgression of the border. Moreover, we
10 cannot but recognize the outstanding tendency of
11 aggravation in their malignant nature. The following
12 is a list of totals of the unlawful acts of the Soviet
13 Union in 1938 and following years, classified by their
14 respective kinds..

15 "1938, total 166; 1939, total 195; 1940, total
16 151; 1941, total 98."

17 I omit the classifications of violations for
18 the year 1941.

19 Defense document 1681, Report of Activities
20 for 1942, of the same section, is tendered for
21 identification and the excerpt therefrom, bearing the
22 same document number is offered in evidence as showing
23 Soviet violations of the frontier for 1942.

24 THE PRESIDENT: Mr. Comyns Carr.

25 MR. COMYNS CARR: May it please the Tribunal,

1 we omitted to object to the two previous ones because
2 we were -- for the time being we could not find them
3 on the list, but in our submission it is obvious from
4 the nature of these documents that they constitute no
5 evidence of the truth of the facts asserted in them
6 which can be relied upon for the defense. They are
7 merely a compilation by a bureau, presumably of the
8 Foreign Ministry, from unknown sources and at the most
9 they constitute merely evidence that that bureau received
10 such reports from somewhere, but no evidence as to the
11 truth of the reports.

12 In our submission the two previous ones should
13 have been rejected if we had taken the objection in
14 time, and should be ignored, and this one should be
15 rejected.

16 THE PRESIDENT: Major Blakeney.

17 MR. BLAKENEY: The prosecution's evidence of
18 alleged Japanese frontier violations was prosecution
19 exhibit 750, a table prepared for use in this trial by
20 an official of the Peoples Commissariat for Home Affairs
21 of the U.S.S.R. This table in question was dated the
22 20th of February, 1946, and is another of the self-serving
23 declarations put into evidence by the Soviet prosecu-
24 tion. As against this, the document now being offered
25 is a report made contemporaneously for the official use

1 of the Japanese Government. This document is marked
2 "secret." It was not published but was for the con-
3 fidential use of government officials in conducting
4 the affairs of state. I submit that again there can
5 be no comparison between the two in probative value.

6 It might be added that excerpts from other
7 similar reports of the same section of the Foreign
8 Ministry, dealing with different matters, have already
9 been admitted over objection of the prosecution. See
10 exhibit No. 2647-A, transcript page 22,922.

11 As for their being no proof of the truth of
12 these reports compiled by the ministry of state, the
13 same observation precisely can be made of the document
14 prepared by the Soviet Home Ministry for use in this
15 trial. At the time of the introduction of exhibit
16 No. 750 this fact was called attention to, that it
17 was a self-serving declaration, and our standing objec-
18 tion to that type of evidence was referred to.

19 I submit that the document is clearly
20 admissible even if similar documents had not already
21 been admitted without objection.
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1 THE PRESIDENT: Mr. Carr, you are invited to
2 reply. You are not asserting the right, but you are
3 invited to do so.

4 MR. COMYNS CARR: If it please the Tribunal,
5 the only provision under which either set of documents
6 could be admissible is the provision in the charter
7 permitting the admission of the investigation reports --
8 reports of investigations by a government. Exhibit 750
9 I gather was such a document reporting an investigation
10 made for the purpose. This is merely a compilation
11 and in our submission is in a different category.

12 THE PRESIDENT: I am told that Exhibit 750
13 does not disclose sources.

14 MR. COMYNS CARR: Well, your Honor, that is
15 all I have to say in the matter.

16 THE PRESIDENT: By a majority the Tribunal
17 overrules the objection and admits the document.

18 CLERK OF THE COURT: Defense document No.1681
19 being a book entitled "Report of Activities for 1942,"
20 in Japanese, will receive exhibit No. 2687. The
21 excerpt therefrom will receive Exhibit No. 2687-A.

22 (Whereupon, defense document No.1681
23 was marked defense exhibit No. 2687 for identi-
24 fication, the excerpt therefrom being marked
25 defense exhibit No. 2687-A, and received in evidence

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DIRECT

1 MR. BLAKENEY: Again I shall read the first
2 paragraph and the kinds and totals of the violations.

3 "The total of the unlawful acts committed by
4 the Soviet Union on the Soviet-Manchurian frontiers
5 during the period from January to the end of December
6 1942 is given in the following list, classified by their
7 respective kinds and the districts where they were
8 committed. Unlawful firing, violation of border, kid-
9 nepping, violence - total 19; violation of the terri-
10 torial air - total 38; interruption in river naviga-
11 tion - 1, total 58."

12 I now call as a witness, UKAI, Yoshio, whose
13 testimony is contained in defense document No. 1147.

14 ---

15 Y O S H I O U K A I, called as a witness on
16 behalf of the defense, being first duly
17 sworn testified through Japanese interpre-
18 ters, as follows:

19 DIRECT EXAMINATION

20 BY MR. BLAKENEY:

21 Q Mr. Witness, please state your name and
22 residence.

23 A 404 Komachi, Kamakura City, UKAI, Yoshio.

24 Q I ask that the witness be handed defense
25 document 1447 and I ask you, Mr. Witness, to examine

UKAI

DIRECT

1 that and state whether that is your affidavit signed
2 and sealed by you?

3 (Whereupon, a document was handed to
4 the witness.)

5 Q (Continuing) It is your affidavit, is it not?

6 A Yes, it is.

7 Q I understand that you wish to make a correction
8 of a name in section 3, paragraph 3, on page 2 of the
9 English version.

10 A Yes.

11 Q Where the name KUBO appears is it not?

12 A Yes, that is so.

13 Q What should the name be?

14 A It should be KAMAZU.

15 Q With that correction are the contents of the
16 affidavit true and correct?

17 A It is correct.

18 MR. BLAKENEY: The affidavit defense document
19 No. 1147 is offered in evidence.

20 THE PRESIDENT: Admitted on the usual terms.

21 CLERK OF THE COURT: Defense document No. 1147
22 will receive exhibit No. 2688.

23 (Whereupon, the document above referred
24 to was marked defense exhibit No. 2688 and re-
25 ceived in evidence.)

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1 MR. BLAKENEY: I read the affidavit, which,
2 omitting formal parts is as follows: (Reading)
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1 "I was the Chief of the Special Service Organ
2 in Dairen from December 1940 to October 1941. Although
3 Semyonov was in Dairen at that time, all testimonies
4 in those parts of his affidavit where reference is made
5 to myself are entirely unfounded upon facts.

6 "(1) Arriving at my post with repeated in-
7 structions from my superior officers not to have any
8 positive dealings with Semyonov, I absolutely avoided
9 intimate relations with him during my term of office at
10 Dairen. I maintained a passive attitude, receiving him
11 merely in order to observe his words and behaviour when
12 he came to see me. Accordingly, I never confided any
13 important matters to him, nor did I entrust to him any
14 tasks.

15 "Semyonov in those days was not only a man
16 "behind the times", but was also a very "commercialized"
17 and untrustworthy person. Even then he was unable to
18 forget his good old days and regardless of the changed
19 times still had his pride as the chief of Cossacks; his
20 mind seemed to be filled with various wild fancies.

21 For some time after my arrival, he often called
22 on me, and seemed anxious to tell me what was in his
23 mind. Sometimes he either brought me or sent me some
24 printed matter, which I had not asked for. In particular,
25 because of the Mongolian blood that runs in his veins,

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1 "I was the Chief of the Special Service Organ
2 in Dairen from December 1940 to October 1941. Although
3 Semyonov was in Dairen at that time, all testimonies
4 in those parts of his affidavit where reference is made
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10 Dairen. I maintained a passive attitude, receiving him
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17 and untrustworthy person. Even then he was unable to
18 forget his good old days and regardless of the changed
19 times still had his pride as the chief of Cossacks; his
20 mind seemed to be filled with various wild fancies.

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22 on me, and seemed anxious to tell me what was in his
23 mind. Sometimes he either brought me or sent me some
24 printed matter, which I had not asked for. In particular,
25 because of the Mongolian blood that runs in his veins,

UKAI

DIRECT

1 I noticed that for several years, he had had his own
2 fantastic ideas concerning Mongolian questions, and he
3 appeared anxious to have me listen to him whenever there
4 was an opportunity. Probably realizing, however, that
5 I was uninterested and indifferent, he by and by stopped
6 telling me. His ideas were, in my observation, out of
7 date, unrealistic, fantastic and therefore completely
8 valueless.

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1 "Such being the case, I faithfully obeyed
2 my superiors' instructions concerning him for the
3 eleven months of my stay; I never confided any important
4 matters to him or commissioned him to do any task. I
5 had never asked for the printed matters that he brought
6 or sent to me; he did so entirely upon his own initia-
7 tive.

8 "(2) I was never once informed of important
9 decisions reached by the higher officers of the Kwan-
10 tung Army during my tenure of office as the Chief of
11 the Special Service Organ in Dairen; so, it was far more
12 out of questions for me to have any authority for
13 direct negotiations with the Army General Staff Office
14 or to be informed of General Staff decisions. There-
15 fore, the testimonies in the paragraphs concerning the
16 opening of hostilities against the U.S.S.R., about which
17 Semyonov stated I had told him in November 1941, are
18 absolutely untrue. Even if I had received important
19 information from higher commands, it would have been
20 unthinkable for me to be so reckless as to reveal such
21 important matters to Semyonov, not only in view of the
22 instructions from higher officers concerning him, but
23 also because of my own conclusion that he was untrust-
24 worthy.

25 "(3) Considered chronologically Semyonov's

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1 affidavit would reveal the following discrepancies:

2 "1. My post was in Tokyo when General DOI was
3 Chief of the Special Service Organ in Harbin.

4 "2. In 1942, I was commander of the 1st
5 Imperial Guard Regiment in Tokyo.

6 "3. I do not know of any chief of Special
7 Service Organ by the name of KAMATSU. There was no
8 such person while I was in Dairen.

9 "4. I received orders for my transfer to
10 Tokyo on 6 November 1941, and left Dairen on the 15th.
11 I was so busy making my preparations at that time that
12 I never had any official talks with guests or commissioned
13 them to perform any task.

14 "If I may explain (4) more fully, three particu-
15 lar points of time are mentioned in Semyonov's affidavit:

16 "a. Towards the end of 1942;

17 "b. November 1941;

18 "c. The time when the Russo-German war was
19 being fought on the outskirts of Moscow.

20 "Point a is too ambiguous and impossible to
21 define. C seems, as a matter of fact, to be November.
22 I shall now study point b., November. It was towards
23 the end of October that I received a telephone message
24 from Hsinking about my transfer, in the near future, to
25 Tokyo. I keenly felt obliged to assume as promptly as

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1 possible my new post, which was Commander of the First
2 Imperial Guard Regiment, whose duty it was to guard the
3 Imperial Palace. Therefore, from the very day that
4 the telephone message came, I started upon the multi-
5 farious preparations, both in official and private
6 affairs, that everybody experiences at the time of
7 transfer. After I received official orders on 6 Novem-
8 ber, I became particularly busy, as I had to go to
9 Hsinking and Harbin to say goodbye, and therefore I
10 had absolutely no time to spare until I left Dairen on
11 the 15th. Of necessity I had to suspend my ordinary
12 office duties. Except the handing over of my duties
13 to the successor, I could not possibly have talked with
14 anyone concerning the official business or have entrusted
15 any tasks to anyone. During this period, Semyonov came
16 to see me once, but we only exchanged formal greetings
17 concerning my transfer.

18 "It is also a mystery to me that L. C. Semyonov
19 picked out as an example only myself, whose term as the
20 Chief of the Special Service Organ in Dairen was so
21 short, and omitted mention of Colonel YASUE and others."

22 You may cross-examine.

23 THE PRESIDENT: General Vasiliev.

24 GENERAL VASILIEV: No cross-examination, your
25 Honor.

1 MR. BLAKENEY: May the witness be excused on
2 the usual terms.

3 THE PRESIDENT: He is excused accordingly.
4 (Whereupon the witness was excused.)

5 MR. BLAKENEY: As my next witness I call
6 FUJITA, Masamichi, who will testify concerning naval
7 matters. His affidavit is defense document 1593.

8
9 M A S A M I C H I F U J I T A, called as a witness
10 on behalf of the defense, being first duly sworn,
11 testified through Japanese interpreters as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. BLAKENEY:

15 Q Please state your name and residence, Mr.
16 Witness.

17 A My name, FUJITA, Masamichi. My address,
18 1307 Ohara-machi, Meguro Ward.

19 MR. BLAKENEY: I ask that the witness be handed
20 defense document 1593.

21 (Whereupon, a document was handed to
22 the witness.)

23 Q And I ask you, Mr. Witness, to examine that
24 document and state whether that is your affidavit,
25 bearing your signature and seal?

1 A This is my affidavit.

2 Q Are the contents thereof true and correct?

3 A Yes, they are.

4 MR. BLAKENEY: The affidavit, defense document
5 1593, together with the attached exhibits and certifi-
6 cates is offered in evidence.
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1 THE PRESIDENT: General Vasiliev.

2 GENERAL VASILIEV: If the Tribunal please, I
3 object to some parts of this document. I ask to
4 delete section (3) because it contains the conclusions
5 made by the witness on matters of international law.

6 I ask to delete from section (4) of the affi-
7 davit, mentions about orders which were allegedly
8 issued but which we have not now and do not know about
9 their whereabouts.

10 I ask also to delete paragraph 3 of section (8)
11 which contains general speculations without statement
12 of particular facts, the witness trying to refute
13 particular facts by these general speculations, the
14 facts which were produced by the Soviet prosecution.

15 I ask to delete all the appendices to the
16 affidavit.

17 First of all, I submit that this way of pre-
18 sentation of documents violates established rules and
19 produces confusion. Besides, appendices A, C and D
20 are absolutely irrelevant to the issues involved in
21 this case. Appendix B is, as far as I understand, the
22 certificate drawn up post factum. It is impossible to
23 understand from this certificate by whom and when it
24 was drawn up. Even if this certificate was drawn up
25 at the time of the events, then we are invited to

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1 believe the unbelievable, that the submarines remain in
2 one place or sail in a limited area. The Japanese
3 authorities evidently attempted at the time to per-
4 suade with the help of this certificate that the Soviet
5 ship was sunk not by the Japanese, but by some other
6 armed forces. It is more than a broad hint at the
7 American or British submarines. We rejected that
8 version then, and we reject it now, although now, in
9 its new edition, it is obviously supported even by
10 American counsel who drafted and introduced the affi-
11 davit. To ascertain that, see the end of paragraph 2
12 on page 7 -- correction: paragraph 7; not paragraph 2,
13 but paragraph 7. Thus, I ask to delete paragraph 3
14 of the section (8), part of the section (4) concerning
15 the orders, and all appendices to the affidavit.
16

17 THE PRESIDENT: Major Blakeney.

18 MR. BLAKENEY: I shall reply to the objections
19 seriatim.

20 Paragraph 3 is said to state conclusions on
21 international law. What the witness is obviously
22 stating is what he, in charge of these matters, and
23 his office adopted as their principle, their under-
24 standing of international law. As to whether their
25 understanding was correct, that can readily be deter-
mined by the Tribunal from inspection of the law in

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1 question. But certainly it has relevance and impor-
2 tance to know what the reason of the Japanese actions
3 was, upon what understanding the Japanese Navy acted.
4 We do not, of course, rely on the witness' statement
5 of what conforms to international law; we rely on his
6 implication that they attempted to do what they under-
7 stood international law to require.

8 As to paragraph 4, objection is made that orders
9 are referred to. The witness makes no statement whether
10 the orders were in writing or otherwise. He can
11 readily be asked on cross-examination whether they were
12 in writing, and if so, he can be required to account
13 for them or produce them. Perhaps they were in writing
14 and perhaps he can produce them; I don't know. But
15 the question doesn't arise until it develops in the
16 testimony that written documents are in question.

17 Going to paragraph 8: The third paragraph
18 of the numbered paragraph 8 is objected to as consisting
19 of conclusions and general statements. It would have
20 been much more accurate to say that this paragraph
21 consists of summation or summary of facts. It is not
22 a conclusion when a witness says results of investigation
23 often revealed as follows. I suppose it is conclusion
24 when we say two things are different, but I think the
25 conclusion that there were differences between papers

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1 and statements is a matter within the competence
2 of any witness. It is not a conclusion when a witness
3 says that entries in logs were made after a certain
4 date.

5 Now, I think that what counsel really wants
6 is the details of those things. That is the typical
7 field for cross-examination, but not for rejection of
8 the witness' evidence.

9 Now on the appendices which counsel wants
10 stricken. He says that the attachment of these
11 appendices consisting of four different documents
12 violates the rule of the Tribunal concerning the pro-
13 duction of documents. This affidavit came to me
14 with mention of those documents and without the attach-
15 ments, and in accordance with what I understood the
16 ruling to be, I secured copies and had them attached
17 and incorporated in the testimony. I must feel from
18 the objection to the incorporation of these appendices
19 that counsel is not really motivated by the burning
20 desire which he often expresses to see the documents
21 referred to in affidavits.

22 Attachments A, C and D are said to be irrelevant.
23 A is an extract from international conventions. C is
24 an extract from the Declaration of London concerning
25 the Laws of Naval Warfare. D is two excerpts from the

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1 regulations of the Japanese Navy. The witness states
2 in his testimony that his service, the Navy, acted
3 in accordance with these international conventions,
4 or attempted to do so. He then attaches the provi-
5 sions of the international consensual acts in question
6 to show upon what understanding they so acted. He
7 states further in his testimony that in a certain
8 case the naval personnel acted in accordance with
9 Japanese Navy regulations, and he attaches the regu-
10 lation. That is a short way of saying we did thus
11 and so.

12 As to attachment B, counsel states that it is
13 impossible to ascertain by whom it was drawn up.
14 Evidently he didn't read the certificate, which says
15 that the attached document of four sheets, and so
16 forth, has been investigated and compiled by the
17 Imperial Japanese Government, naming the section
18 responsible, and is certified to by the chief of that
19 section. Beyond that, the oath of the witness to the
20 affidavit supports exhibit B, which is incorporated
21 by reference therein. Therefore, it has twice over
22 the support of oath or certification.

23 General Vasiliev went beyond the statement
24 of those objections to testify, as I view it, con-
25 cerning the submarines' movements, a matter much

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1 better asked of the witness. He states also that he
2 rejects the interpretation of the incident, or the
3 evidence now offered in defense or in connection with
4 it; and while we quite understand that he rejects our
5 view of the evidence, possibly he doesn't realize that
6 we don't always subscribe to his view of the evidence,
7 either. Therefore, I detect no ground of validity
8 for the objection aimed at this document, and I submit
9 that it is admissible in toto.
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THE PRESIDENT: Well, at this stage of the trial, I think we are all disappointed to have placed before us an affidavit which is not confined to statements of fact but which does extend to opinions. We also expect the affidavits to disclose documents or account for their absence where documents are relied upon. This affidavit places upon my colleagues the onus of making up their minds on a number of points. Some may uphold your points, some may overrule them, and we may have eleven different decisions because of the number of points involved. That is not fair to the Tribunal.

Let me give an example of how it operates. Take this very matter: one Judge thinks that General Vasiliev's point should have been overruled without hearing the other side, without calling on them; other Judges think the objections should be upheld but they do not agree as to the extent to which they should be upheld. Of course, I am not going to overrule any objection without giving the other side a chance or without calling on them if there is any substance at all in the objection. I have to be very sure that I have all my colleagues with me on a point before I take that course. Had I taken that course in this case, I would have had serious

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15 Vasiliev's point should have been overruled without
16 hearing the other side, without calling on them;
17 other Judges think the objections should be upheld
18 but they do not agree as to the extent to which they
19 should be upheld. Of course, I am not going to over-
20 rule any objection without giving the other side a
21 chance or without calling on them if there is any
22 substance at all in the objection. I have to be
23 very sure that I have all my colleagues with me on
24 a point before I take that course. Had I taken that
25 course in this case, I would have had serious

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1 differences of opinion registered with me, and I
2 have.

3 But, all this is due to the fact that this
4 affidavit has not complied with the repeated require-
5 ments of the Court.

6 MR. BLAKENEY: I should like to submit to
7 your Honor, if I may add a word, that it was the in-
8 tention to comply with the requirements of the Tri-
9 bunal, and I submit that I cannot be expected to
10 understand the requirements any better than a Member
11 of the Tribunal who thinks that the objection should
12 have been overruled without calling on me.

13 If, however, your Honor will indicate the
14 portions considered objectionable as opinion, which
15 I am sincerely unable to discover, I will be glad
16 to delete them and bring out by a few simple addition-
17 al questions what I believe to be the intent of the
18 words here used.

19 THE PRESIDENT: You know very well, Major,
20 that a statement, and this affidavit contains such a
21 statement, that international law has been complied
22 with involves an opinion. There would be no objection
23 to a statement that certain things were done with a
24 view to complying with international law. That affi-
25 davit contains no such statement.

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1 I am not going to pursue the matter any
2 further. I have told you the result on the minds
3 of my colleagues.

4 MR. BLAKENEY: I suppose I must be told
5 whether the affidavit is admitted to be read with
6 deletions or is rejected in toto.

7 THE PRESIDENT: I shall tell you the result
8 when my colleagues have gone to the trouble to state
9 their opinions on paper, and they are doing that now.

10 I haven't a majority for any particular
11 viewpoint. I have three for total rejection of the
12 objections, that is, overruling of the objections,
13 one for allowing them in full, another for allowing
14 them in full with a certain reservation, three other
15 Judges are in favor of partially overruling the ob-
16 jections but to a different extent in each case, and,
17 of course, I am here to state the views of the major-
18 ity and not to disregard the Members of the Tribunal
19 and substitute my own opinion.

20 GENERAL VASILIEV: I think that the result
21 of the voting shows that this affidavit is not good,
22 and I think that the best course would be to direct
23 the defense to redraft this affidavit in accordance
24 with the established rule.

25 THE PRESIDENT: I have one sensible

1 suggestion to which I would like to be able to
2 give effect. It is that we reject the document
3 and ask that it be reproduced after editing by
4 Major Blakeney, but I need a majority before that
5 can be done.

6 MR. BLAKENEY: If I may suggest, the re-
7 editing would, I believe, consist of adding to five
8 sentences or parts of sentences the words "the
9 officials of the Navy Ministry believed" and, as I
10 have mentioned, I should be very happy to omit those
11 sentences and then ask the witness additional ques-
12 tions concerning them.

13 And, I should like to point out also that,
14 if I am not mistaken, on some occasions in the past
15 the Tribunal has adopted the position that a docu-
16 ment, the admission of which was desired by any
17 Member, should be received.

18 THE PRESIDENT: That has not be agreed upon,
19 and I am quite sure will not be agreed upon by the
20 Members of the Tribunal.

21 MR. BLAKENEY: And, further I should like --

22 THE PRESIDENT: There is a majority for this,
23 to save time, that we receive this affidavit intimat-
24 ing that we are going to reject everything in the
25 nature of opinions, that we expect our rules to be

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1 complied with otherwise, and that in future we will
2 reject such affidavits as this if they similarly
3 offend. There is a majority for that.
4

5 The objection is overruled with that
6 qualification, and the document is admitted on the
7 usual terms.

8 We will recess for fifteen minutes.

9 (Whereupon, at 1445, a recess was
10 taken until 1500, after which the proceed-
11 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: The document had not been
5 given a number, I believe.

6 CLERK OF THE COURT: Defense document 1593
7 will receive exhibit No. 2689.

8 (Whereupon, the document above
9 referred to was marked defense exhibit 2689
10 and received in evidence.)

11 MR. BLAKENEY: I propose to read the document
12 with the omission of five sentences or parts thereof
13 which I will state as I reach them.

14 Omitting formal parts, the document is as
15 follows:

16 "1. My name is FUJITA, Masamichi. I formerly
17 was a captain in the Japanese Navy and served in the
18 Naval Affairs Bureau of the Navy Ministry from June
19 1942 until the termination of the war. My duties
20 placed me in charge of affairs dealing with the organ-
21 ization and movements of shipping. I was one of the
22 officers in charge of administering matters dealing
23 with shipping of the Soviet Union.

24 "2. The Chief of the Bureau during the war
25 told me, regarding my duties, that 'the only major

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1 power with which Japan maintains normal international
2 relations today is the Soviet Union. Therefore we
3 must devote every effort toward maintaining friendly
4 relations with that country. All officers concerned
5 should devote the greatest attention to this and
6 exert every effort to avoid any friction that might
7 arise as a result of military mistakes. This is ab-
8 solutely necessary because to do otherwise may force
9 our diplomats to face an awkward situation.'

10 "I, and several others who were in charge
11 of shipping matters relative to the Soviet Union,
12 scrupulously abided by our instructions and adopted
13 extreme precautions to the end of not violating any
14 treaties, laws or regulations which might in any way
15 provoke Soviet wrath. Whenever any incident or
16 happening demanding Soviet-Japanese negotiations arose,
17 we compiled data on the basis of rendering the Soviet
18 Union every possible concession. Then we forwarded
19 this report to the authorities of the Foreign Ministry.
20 Actually we made concessions which were almost humil-
21 iating, and many of the officers considered them to
22 be abandonment of our lawful rights as a belligerent
23 power at that time. For example, I point to the un-
24 conditional release of Soviet ships which changed their
25 nationality.

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1 "3. After the outbreak of the Pacific War,
2 the Japanese Navy enforced such measures as the
3 establishment of sea defense areas, designation of
4 navigation routes and warnings against entry into
5 specified sea areas at the Straits of Soya and a few
6 other places. While this naturally restricted naviga-
7 tion, the procedure adopted was in accordance with
8 Article 3 of the agreement on the laying of automatic
9 release submarine mines (hereto attached and marked
10 Exhibit 'A')."

11 Sorry, I didn't mean to read that sentence.
12 I omit the next sentence likewise.

13 "The Ministry's desire and sole objective
14 relative to the Soviet Union was to maintain friendly
15 relations, and this motive tempered to a large extent
16 the restrictions on liberty of navigation. We did not
17 consider the measures adopted as coercive in any respect.

18 "4. Strict orders were issued prohibiting
19 the inspection, apprehension or internment of ships
20 unless conducted in conformity with existing inter-
21 national usage. According to reports which I received
22 from the sea areas concerned, there was not a single
23 case of a violation of international regulations
24 reported. All ships entering the prohibited sea areas
25 were intercepted and searched, and the officers in

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1 charge were questioned. This wartime procedure was
2 absolutely necessary for various operational reasons
3 such as the precautionary matter of preventing the
4 confusion of such ships with enemy craft, thus removing
5 also the cause for any resulting disasters and disputes.
6 The inspections conducted of the Sergev Kirov and the
7 Angarstrov fit into this category. The reason for this
8 bringing them to quiet waters was only to avert possible
9 danger.

10 "5. Both entrances to the Tsugaru Straits
11 are 10 nautical miles wide (9.5 nautical miles at the
12 narrowest point). This Strait has long since been
13 recognized officially as under our possession." I
14 omit the next sentence. "I wish to emphasize that
15 although the Tsugaru Straits join two open seas, there
16 are other passages connecting the two seas. Moreover,
17 every possible convenience in the existing circumstances
18 was provided by notifying just what other sea lanes
19 were considered safe.

20 "6. It is true that navigation waterways
21 for Soviet shipping were restricted to two sea lanes.
22 However, when the Soviet Union demanded passage through
23 Soya Straits we never refused their request. There was
24 a reason for restricting Soviet shipping to two water
25 lanes. At that time we were facing the grave danger of

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1 United States submarines passing through the Straits
2 and thereby reaching the Japan Sea; as a protective
3 counter-measure, considered absolutely necessary from
4 the military point of view to preserve this safety in
5 navigation, we took this step. At the same time the
6 measure adopted afforded a protective service for
7 Soviet ships in securing their safe passage.

8 "7. On inspecting the Angarstrov we found
9 that the ship's papers were missing -- it was reported
10 that the ship's papers had been left at the port of
11 embarkation -- and that it also did not possess neces-
12 sary papers on radio conditions, etc." I omit the
13 next sentence through the word "but" and continue:
14 "the ship was released because of our instructions not
15 to provoke in any way an incident which might mar
16 friendly relations with the Soviet Union.

17 "After this ship had been released it was
18 sunk by a submarine. The facts were as follows:
19 Around 10:00 p.m. on 1 May 1942, at a point 36 nautical
20 miles west of the Danjo Archipelagoes, 32 degrees
21 0 minutes North Latitude, 127 degrees 41 minutes East
22 Longitude, the ship met its ill-fated end. There were
23 absolutely no Japanese submarines operating in this
24 area, not to mention any being stationed there at that
25 time (report hereto attached and marked Exhibit 'B').

1 Moreover, on the very same day, a Japanese ship --
2 the Calcutta Maru -- was sunk in the same area by a
3 submarine attack. Although the Soviet Union entered
4 a protest alleging that the sinking was by Japanese
5 submarine, we feel that the sinking of the Japanese
6 ship at the same time and at the same place may assist
7 in arriving at a conclusion as to which country's
8 submarine was in action.

9 "The Japanese ship Kayo Maru rescued the
10 survivors of the Angarstrov's crew, after operating
11 for an hour in waters considered dangerous because
12 of enemy activities. The crew were afforded full
13 protection and this dangerous rescue undertaking was
14 further in keeping with our instructions to maintain
15 friendly relations with the Soviet Union. We actually
16 expected an expression of gratitude from the Soviet
17 Union for this rescue but we were met with a protest.
18 I well remember the 'voices of indignation' raised
19 because of the injustice to us; it was hardly conceiv-
20 able that such a gross misinterpretation of the actual
21 facts could have been made.

22 "8. Regarding the change of nationality and
23 the problem of interning Soviet ships, I recall that
24 in the middle of 1943 the Kamenetz Potolsk and the Ingul
25 were involved. These were Soviet ships which were

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1 interned because there was reasonable ground for
2 suspicion concerning their nationality," and I omit
3 the rest of that sentence. "The ships were detained
4 for further investigation, but as the Soviet Union
5 did not present appropriate proof or evidence of
6 their nationality the prolonged internment was un-
7 avoidable.

8 "The lack and disorder of the ship's
9 papers and the falsity and inaccuracy of the
10 Captain's statements were alone sufficient to provoke
11 arrest of the ships. But, in keeping with our policy
12 and in the interests of friendly relations with the
13 Soviet Union, investigations were conducted simply
14 by mere detention.

15 "The results of the investigation often
16 revealed cases of some ships possessing no papers of
17 any kind, nor certificates showing their nationality.
18 There were differences between the ship's papers and
19 the Captain's statements in many instances, and often
20 the papers on all matters were very incomplete and
21 disorderly arranged. Furthermore, most of the entries
22 in the logs were made after the outbreak of the
23 Pacific War, and all ships were under suspicion as
24 being those of the United States because there was a
25 natural tendency for American ships to pose as Soviet

1 ships in order to avoid capture." I omit the next
2 sentence. "In spite of the existing conditions as I
3 have described them, it must be emphasized that all
4 ships were released almost unconditionally in further-
5 ance of our policy toward the Soviet Union.

6 "9. I recall the problem involved in the
7 bombing and sinking of the Perekop and Maikop in
8 response to Soviet protests against Japanese aircraft.
9 Regarding these cases we made a detailed and thorough
10 inquiry into the matter. We received reports that
11 there were no Japanese planes corresponding to the
12 Soviet allegations, and that there were no Japanese
13 planes operating in that area at that time. Military
14 men recognize the possibility of frequent mistakes of
15 identification of aircraft, and since there was no
16 evidence an accurate conclusion could not be reached.
17 The Soviet Union unfortunately had no photographs or
18 other evidence of a precise nature which would assist
19 us in determining the matter fully.

20 "10. Regarding the disaster of the Mariupol,
21 I recall that the vicinity where the incident took
22 place was already recognized as a battle area. It was
23 moreover a strategically important point. It was im-
24 possible to tolerate the stopping of a foreign ship
25 in our territorial waters for security reasons.

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1 However, from the standpoint of maintaining friendly
2 relations with the Soviet Union, the military dis-
3 advantages were accepted and we agreed to the Soviet
4 proposal for relief operations by Soviet ships.

5 "Owing to inefficient communication between
6 Soviet authorities in the locality concerned, as well
7 as poor control in the system of command, considerable
8 time elapsed before the rescue project actually began;
9 the high waves and snow storms further postponed the
10 beginning of the operations. The Mariupol was firmly
11 grounded, and furthermore her engine-room had exploded
12 and the problem of refloating her was most difficult.
13 This accounts for the project's ending in failure.
14 The instructions which I and my fellow officers
15 received time and time again was to extend full
16 service in rescue operations without respect to
17 nationality or treaty provisions." I believe the
18 next sentence is a statement of fact and I therefore
19 shall not omit it. "We, of course, followed the pro-
20 visions set forth in Naval Personnel Service Regulations,
21 Clause 109, (hereto attached and marked Exhibit 'D')
22 and Explanations on Naval Overseas Regulations, Page
23 254 (hereto attached and marked Exhibit 'D-1'). We
24 offered the greatest possible aid in the existing
25 circumstances, together with permission for Soviet

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1 ships to engage in rescue operations, which included
2 long stoppage and so forth."
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1 Now, with leave of the Tribunal, I should
2 like to put a few additional questions.

3 May the affidavit be handed to the witness.

4 Q I refer you, Mr. Witness, to numbered
5 paragraph 3 of the affidavit, referring to matters
6 such as the establishment of sea-defense areas, and
7 ask you to state whether it was the opinion of the
8 authorities of the Japanese Navy that the measures
9 taken as therein related conformed to existing
10 international usage concerning the notification
11 of the establishment of sea-defense areas and
12 specification of navigation routes.

13 A The policy of the Japanese Government was
14 to -- of the Japanese Navy was to strictly observe
15 international treaties.

16 Q But I asked whether it was the belief of
17 the authorities that the measures so taken were in
18 conformity with treaties.

19 A They were. They did so conform.

20 Q I ask you if they were believed so to conform?

21 A They were believed so to conform.

22 Q I refer you to numbered paragraph 5 of the
23 affidavit, referring to the Tsugaru Straits, and I
24 ask you whether it was the belief of the Japanese
25 naval authorities that it was within your legal

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DIRECT

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23 affidavit, referring to the Tsugaru Straits, and I
24 ask you whether it was the belief of the Japanese
25 naval authorities that it was within your legal

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1 and sovereign rights to deny the navigation of
2 those waters?

3 A Yes, they believed exactly as you say.

4 Q I refer you to paragraph numbered 7 of
5 your affidavit, relating to the ship, Angarstrov,
6 and I ask you whether it was the understanding and
7 belief of the Japanese naval authorities that under
8 international regulations the ship could have been
9 seized by reason of the absence of the ship's papers?

10 A They did believe so.

11 Q I refer you to paragraph numbered 8 of
12 the affidavit relating to the ships, the Kamenetz
13 Potolsk and the Ingul, and I ask you whether it was
14 the belief and understanding of the Japanese naval
15 authorities that these vessels fell within the
16 provisions of the London Declaration on Naval War-
17 fare?

18 A Yes, they did.

19 Q Especially clauses 55 and 56 thereof
20 which were attached to your affidavit and marked
21 exhibit "C"?

22 A That is so.

23 Q And referring further to the same para-
24 graph numbered 8, the last subparagraph thereof,
25 I ask you whether it was considered and believed

1 by the authorities of the Japanese Navy that the
2 suspicion that ships stopped were American ships
3 was sufficient ground for detention and complete
4 investigation?

5 A The Navy Ministry believed -- the naval
6 authorities believed that the probability was very
7 great that American ships had changed their registry
8 to the Soviet side because -- in order to avoid
9 being captured.

10 Q And did they, therefore, believe that
11 under international law they had grounds for deten-
12 tion and investigation of those ships?

13 A Yes, they did.

14 MR. BLAKENEY: I now propose to read parts
15 of the annexed exhibits.

16 From exhibit A, which is found on page 4
17 of the affidavit, I shall read the last paragraph
18 of the excerpt:

19 "The belligerents undertake to provide,
20 so far as possible, for these mines becoming
21 harmless after a limited time has elapsed, and,
22 where the mines cease to be under observation, to
23 notify the danger zones as soon as military
24 exigencies permit, by a notice to mariners, which
25 must also be communicated to the Governments

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through diplomatic channels."

From exhibit B I shall read the entire text, omitting the table. (Reading):

"Summary of the Movements and Locations of Japanese Submarine Forces around April and May 1942.

"1. The organization of the submarine forces and locations thereof as of 10 April 1942 are as set forth in the attached table.

"2. The movements of submarines during the period from 10 April to May, 1942.

"a. 1st Submarine Squadron.

"Each submarine of this squadron was under repairs at Yokosuka, and consequently in inoperative condition. In the middle part of May all submarines commenced their movements for the Aleutians Area.

"b. 2nd Submarine Squadron.

"Submarine I-1 was under overall repairs at Yokosuka till early June. The other submarines operated in the Indian Ocean during April, and left Singapore for Yokosuka late in May.

"c. 3rd Submarine Squadron."

"As the attack of a United States task force was anticipated from the sea area to the

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1 east of Tokyo Bay, all the submarines of this
2 squadron, leaving Kure on 15 April, advanced to
3 the above-mentioned sea area in search of the
4 task force. From the end of the same month they
5 moved to Kwajalein, except Submarine I-8, I-68
6 and I-72.

7 "At the end of the month Submarine I-8
8 returned to Yokosuka because of certain troubles,
9 and Submarine I-68 to Kure owing to engine trouble.
10 Submarine I-72 also returned to Yokosuka at the
11 beginning of May owing to the breakdown of her
12 engine.

13 "d. 8th Submarine Squadron.

14 "Submarine I-30 left Kure directly for
15 Penang on 11 April, and was engaged in operations
16 in the Indian Ocean after the latter part of April.
17 Submarine I-10 and the 1st Submarine Division left
18 Kure on 15 April directly for Penang, and were
19 engaged in operations in the Indian Ocean after
20 the latter part of April.

21 "The 3rd and 14th Submarine Divisions
22 (exclusive of Submarine I-30), leaving Kure on
23 15 April, advanced to the sea area to the east of
24 Tokyo Bay and were engaged in the search for the
25 United States task force. From the end of the same

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1 month they were engaged in operations in the
2 Coral Sea Area.

3 "e. 13th Submarine Division.

4 "Submarine I-121 and I-122 were under
5 repairs at Kure, and Submarine I-123 at Yokosuka,
6 till the early part of May, and they were con-
7 sequently all in inoperative condition.

8 "f. 5th Submarine Squadron.

9 "Submarines I-56, I-57 and I-58 were
10 under repairs at Kure and the other submarines
11 at Sasebo, and they were consequently all in
12 inoperative condition.

13 "g. 7th Submarine Squadron.

14 "The 26th and 33rd Submarine Divisions
15 were under repairs till the end of May at Sasebo
16 and Maizuru, respectively, and they were con-
17 sequently all in inoperative condition.

18 "The 21st Submarine Division was engaged
19 in operations in Rabaul Area after the middle part
20 of April.

21 "h. Submarines belonging to the Kure
22 Naval Station Forces.

23 "The 18th and 6th Submarine Divisions
24 were generally engaged in the educational opera-
25 tions of the Naval Submarine School, and the other

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1 submarines were under repair. Accordingly none of
2 them made movements anywhere beyond the area of the
3 Inland Sea."
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1 Coming now to exhibit C, I shall read the
2 first paragraph of Article 55 and the first para-
3 graph of Article 56.

4 "Article 55. - The transfer of an enemy
5 vessel to a neutral flag, effected before the out-
6 break of hostilities, is valid, unless it is proved
7 that such transfer was made in order to evade the
8 consequences to which an enemy vessel, as such, is
9 exposed. There is, however, a presumption, if the
10 bill of sale is not on board a vessel which has lost
11 her belligerent nationality less than sixty days
12 before the outbreak of hostilities, that the transfer
13 is void. This presumption may be rebutted.

14 "Article 56. - The transfer of an enemy
15 vessel to a neutral flag, effected after the out-
16 break of hostilities, is void unless it is proved
17 that such transfer was not made in order to evade
18 the consequences to which an enemy vessel, as such,
19 is exposed."

20 And from exhibit D I read Article 109
21 complete.

22 "If the captain of a naval service ship
23 observes a grounding, collision or fire, or facts
24 showing a ship to be in distress, he must extend
25 adequate relief if it does not hinder his duties.

1 If, owing to weather conditions or the demands of
2 duty, he is unable to afford relief, he must
3 rescue human life if possible and deliver those
4 rescued to any convenient harbor, and reporting the
5 matter to the Navy Minister and also to the commanding
6 officer of the unit to which he is attached."

7 And from exhibit D-1 I shall read the
8 second and fourth paragraphs.

9 "In Article 11 of the Treaty on codification
10 of regulations (concluded in September 1910) dealing
11 with 'rescue and relief of ships in distress' it
12 is stated, 'If human life is in danger at sea, the
13 captain is required to rescue that person, should
14 that person be an enemy national, provided it will
15 not subject ship, crew or passengers of his own
16 ship to grave danger.' (This article is not applicable
17 to naval service ships.)

18 Paragraph 4.

19 "It can be argued whether there is an obligation,
20 from the viewpoint of international law, to rescue
21 and extend relief when such obligation does not exist
22 in treaties. However, it may be said that affording
23 relief to ships in distress, so far as circumstances
24 permit is commonly observed in general."

25 You may cross-examine.

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THE PRESIDENT: General Vasiliev.

CROSS-EXAMINATION

BY GENERAL VASILIEV:

Q Mr. Witness, do you give your testimony on the basis of documents or from memory?

A Mainly from memory.

Q How should I understand "mainly"? What testimony is based on the documents and where are those documents? Can you produce them?

A The affidavit is mainly from memory. The appendices are from documents.

Q Have I understood you correctly that all your affidavit except the appendices to it is drawn from memory and you cannot produce any documents?

A That is so.

Q You held the post stated in your affidavit from June 1940 to 1942, didn't you?

A Yes.

Q But a number of facts are related to the earlier period, to 1941 and to the beginning of 1942. How can you remember these facts if you didn't fill that post at that time?

A When I took over my office from my predecessor I naturally succeeded to his policy and there are many of my predecessor's policies which were actually

1 executed after I came into office.

2 Q Then, you yourself were not concerned with
3 these investigations and you speak about these
4 investigations from hearsay.

5 A That is not so. As I have stated in the
6 beginning of my affidavit I was one of several
7 who were in charge of these matters.

8 Q In your affidavit in the second paragraph,
9 at the end of the second paragraph, you state or
10 you speak about release of the Soviet ships which
11 changed their nationality. What are you speaking
12 about?

13 A By these ships I mean ships which were of
14 Soviet registry, but which had changed from American
15 to Soviet registry after the outbreak of the War
16 and whose documents relative to such change were
17 faulty.

18 Q I do not know, maybe it is the fault of
19 translation, but in your affidavit it is said that
20 the Soviet ships changed their nationality and sailed
21 under foreign flags.

22 A That was not my meaning.

23 Q About what ships in particular are you
24 speaking, if we take it that these ships were first
25 American and then became Soviet ships?

1 A As is stated later on in my affidavit
2 Kamenetz Potolsk and the Ingul are the two ships
3 whose names I remember. I believe there were several
4 others, but I do not now remember their names.
5 That is in paragraph 8.

6 Q Maybe I am mistaken but it seems to me that
7 the witness is reading from something. I repeat:
8 Maybe I am mistaken, but I get that impression. I
9 am not mistaken. He has his affidavit before him.
10 I think it is not right.

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1 A I have my affidavit in my hands now.

2 GENERAL VASILIEV: Maybe the witness will
3 be allowed to use his affidavit while giving his
4 testimony.

5 THE PRESIDENT: Not without the permission
6 of the Court. We were unaware that he had it.

7 Q What documentary evidence do you have that
8 these ships were bought in America, changed their
9 nationality, as you call it, and that you had the
10 right to detain them and take some repressive
11 measures against them?

12 A (There was no answer.)

13 Q Will you answer my question? What docu-
14 mentary evidence did you have that these ships were
15 American ships and that you could apply to them some
16 repressive measures and to detain them?

17 A According to the London Declaration, Clause
18 56, the changes in nationality of a ship after the
19 outbreak of a war are not valid. The two ships in
20 question had very faulty ships' documents. This
21 alone would be sufficient to warrant detention of
22 these ships -- the seizure of these ships.

23 Q What documentary evidence do you have to
24 confirm that the ships' papers were faulty?

25 A That the ships' papers were faulty was the

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1 report made by the authorities who examined the ship
2 on the spot.

3 Q Then, if you decided to act in conformity
4 with international law, you felt you had the right
5 to confiscate those ships? Are you of that opinion?
6

7 A I believe that we did have the right to
8 confiscate them.

9 Q And had you exercised this right?

10 A No.

11 Q Where are those documentary evidences
12 which certify that the papers produced by the cap-
13 tain of the ship were faulty?

14 A I believe that document probably does not
15 exist now.

16 Q Why doesn't it exist? Where is the docu-
17 ment?

18 A These reports were in the Navy Ministry,
19 but when the Navy Ministry was burned, these docu-
20 ments were also burned.

21 Q In the third paragraph of your affidavit
22 you contend that the measures established by the
23 Japanese Government you did not consider to be
24 coercive. Is that so?

25 A We considered them not coercive.

Q Then, it was up to the Soviet Union to

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1 decide whether to follow these measures or not?
2 It was the wish of the Soviet Government, according
3 to you?

4 A (There was no answer.)

5 Q Will you answer this question? If some
6 limitations were placed upon shipping, then the
7 Soviet Union could at its own discretion conform
8 with them or not?

9 A Since it was a friendly warning, we could
10 not prevent the Soviet Union from disregarding
11 this warning at its own risk.

12 Q Will you answer my question? Were these
13 measures coercive or obligatory, and whether the
14 Soviet Union could follow them at its own wish?

15 MR. BLAKENEY: I submit that the witness
16 has just answered the question explicitly.

17 THE PRESIDENT: He did so, using the word
18 "coercive."

19 Q In paragraph 4 of your affidavit you speak
20 of orders prohibiting inspection of Soviet ships.
21 By whom were these orders issued and where are they
22 now?

23 A I believe the question was mis-translated.
24 May I have it repeated?

25 Q In paragraph 4 of your affidavit you speak

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24 May I have it repeated?

25 Q In paragraph 4 of your affidavit you speak

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1 about orders adjusting the attitude of the Japanese
2 authorities to Soviet shipping. I ask you where
3 those orders are and who issued them.

4 A These orders were issued by the Navy
5 Minister. From the Navy Minister it went to the
6 Chief of the Naval Affairs Bureau and from the Naval
7 Affairs Bureau to my section chief, and from my
8 section chief to myself. I conveyed these orders
9 on every possible occasion by telephone.

10 Q In paragraph 7 of your affidavit you do
11 not deny the fact of the sinking of the ship
12 "Angarstrov" in May 1942. What conclusion was
13 reached by your ministry after the investigation
14 as to whom this ship was sunk by?

15 A The only two enemy countries whose subma-
16 rines could possibly be operating at that time in
17 that area were England and America. It must have
18 been either one of those two countries.

19 Q And Japan?

20 A We found out by research -- We established
21 by investigation that Japanese submarines were not
22 operating in that area at that time.

23 Q What distance is the place of the sinking
24 of this ship from Japan?

25 A There is an archipelago known as the

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1 Nannyo Archipelago to the west of Kyushu. The
2 ship was sunk about thirty-six miles west of this
3 archipelago.

4 Q Then, the nearest Japanese territory was
5 a distance of forty miles, as far as I understand
6 if it was translated correctly?

7 A Yes.

8 THE PRESIDENT: We will adjourn now until
9 half-past nine tomorrow morning.

10 (Whereupon, at 1600, a recess was
11 taken until Wednesday, 4 June 1947, at 0930.)

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